

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HOUSTON HOME DIALYSIS, LP
Plaintiff,

V.

BLUE CROSS and BLUE SHIELD OF TEXAS, A DIVISION of HEALTH CARE SERVICE CORPORATION, A MUTUAL RESERVE COMPANY, and HORIZION BLUE CROSS BLUE SHIELD OF NEW JERSEY

Defendants.

CIVIL ACTION NO. 4:17-cv-02095

**PLAINTIFF HOUSTON HOME DIALYSIS, LP'S UNOPPOSED MOTION TO
SEAL PLAINTIFF'S FIRST ORIGINAL COMPLAINT AND THE EXHIBITS
ATTACHED THERETO**

Plaintiff Houston Home Dialysis, LP (“Houston Home Dialysis”) files this Unopposed Motion to Seal Plaintiff’s First Original Complaint and the Exhibits Attached Thereto. Houston Home Dialysis requests that this Court permanently seal from its records Houston Home Dialysis’ original pleading in this case and the exhibits attached thereto because those documents contain confidential patient information. Defendant Health Care Service Corporation, a Mutual Legal Reserve Company that operates in Texas as Blue Cross and Blue Shield of Texas (“Texas Blue Cross”), does not oppose the sealing of these documents.

In support of this motion, Houston Home Dialysis shows the Court the following:

1. On July 8, 2017, Houston Home Dialysis filed its First Original Complaint in this lawsuit. [Dkt. No. 1]. Houston Home Dialysis' First Original Complaint and the exhibits attached thereto contain confidential patient information, including the names of the four patients of Houston Home Dialysis whose benefit claims were at issue in Houston Hone Dialysis' First Original Complaint, as well as the individual treatment records for those four patients.

2. On November 1, 2017, Houston Home Dialysis filed its Unopposed Motion for Substitution of Counsel seeking to substitute Earnest Wotring, David George, and Karen Dow of Baker • Wotring LLP as attorneys of record in this case, in the place and stead of Paul V. Anderson of Anderson PLLC. [Dkt. No. 8].

3. On November 2, 2017, this Court issued an Order granting Houston Home Dialysis' Unopposed Motion for Substitution of Counsel. [Dkt. No. 9].

4. On December 21, 2017, Houston Home Dialysis filed its First Amended Complaint and Request for Declaratory Judgment against Defendant Texas Blue Cross and newly-added Defendant Horizon Blue Cross Blue Shield of New Jersey. [Dkt. No. 13]. Houston Home Dialysis' amended pleading contains no confidential patient information, and there are no exhibits attached to that pleading.

5. Although courts have recognized that the public has a common law right to inspect and copy judicial records, the public's common law right is not absolute.¹ While the common law right of access to judicial records is not absolute, "the district court's discretion to seal the record of judicial proceedings is to be exercised charily."² In exercising its discretion to seal judicial records, the court must balance the public's common law right of access against the interests favoring nondisclosure.³

6. In this case, the protection of confidential patient information contained in Houston Home Dialysis' First Original Complaint and the exhibits attached thereto outweighs the right of access the public may possess. Excluding Houston Home Dialysis' First Original Complaint and

¹ *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993).

² *Id.* (quoting *Fed. Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987)).

³ *Van Waeyenberghe*, 990 F.2d at 848.

the exhibits attached thereto from the public record protects the legitimate privacy rights of the patients whose benefit claims were at issue in Houston Home Dialysis' original pleading. In addition, the protection of that confidential patient information is not injurious to the public.

WHEREFORE, for all of the reasons set forth in this motion, Plaintiff Houston Home Dialysis requests that this Court sign and enter an Order granting its Unopposed Motion to Seal Houston Home Dialysis' First Original Complaint and the Exhibits Attached Thereto, and further permanently seal from the Court's records Houston Home Dialysis' First Original Complaint and the exhibits attached thereto.

Respectfully submitted,

BAKER • WOTRING LLP

/s/ Earnest W. Wotring

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**COUNSEL FOR PLAINTIFF
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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Plaintiff Houston Home Dialysis has conferred with counsel for Defendant Blue Cross Texas, and Blue Cross Texas is unopposed to this Motion to Seal Plaintiff's First Original Complaint and the Exhibits Attached Thereto. Blue Cross Texas is further unopposed to the permanent sealing from the Court's records of Houston Home Dialysis' First Original Complaint at the exhibits attached thereto.

/s/ Earnest W. Wotring

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2018, a copy of the above Unopposed Motion to Seal Plaintiff's First Original Complaint and the Exhibits Attached Thereto was served on all counsel of record via the Court's electronic filing system.

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/s/ Earnest W. Wotring
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